

**ORDINANCE NO. 486**

**AN ORDINANCE OF THE CITY OF HERCULES ESTABLISHING POLICIES TO ADDRESS AND PREVENT NEPOTISM AND CRONYISM IN CITY EMPLOYMENT AND CONTRACTING**

**WHEREAS**, to promote and maintain confidence in City government, it is imperative that City employment and contracting are free from nepotism, cronyism, patronage, and favoritism; and

**WHEREAS**, it is imperative that City employment and City contracts be based on merit, so that citizens are assured that City employees will be providing the highest quality service to those deserving citizens; and

**WHEREAS**, nepotism, cronyism, patronage, and favoritism are demoralizing and dispiriting to the dedicated, hard-working employees of the City; and

**WHEREAS**, the hiring of city officials, contractors and consultants who have a family, business, or consensual romantic and/or sexual relationship with a City official creates the appearance of impropriety and should be discouraged.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hercules as follows:

**1. The Hercules Municipal Code is hereby amended to include Title 2, Chapter 3, Article 4, to read as follows:**

**“Article 4. PREVENTION OF NEPOTISM AND CRONYISM IN EMPLOYMENT AND CONTRACTING**

**Sec. 2-3.401 Purpose**

In adopting this Article, it is the intent of the City Council to prohibit the contracting with, and employment of, relatives and friends of City Officials, to ensure that no conflict of interest, favoritism, preferential treatment, or discrimination enters into the hiring, promotion, contracting and/or transfer practices of the City.

The regulations established by this Article shall apply to all City officials, as defined herein, and to all individuals or firms who provide services to the City as independent contractors or paid consultants.

**Sec. 2-3.402 Definitions**

“City” as used herein shall mean the City of Hercules, California.

“City Officials” for the purposes of this Article means City Elected Officials, City Appointed Officials, appointees to City ad hoc or standing committees, appointees to City Commissions, and City Employees, including all individuals who are employed by the City Manager, City Attorney, and City Clerk, as well as all employees of City Agencies and Departments.

“Contractor” means any individual or firm providing material, equipment, or services to the City pursuant to a written or oral agreement with the City as an independent contractor or consultant, and not as an employee.

"Family Relationship" means a relationship by blood, adoption, marriage, domestic partnership, foster care, and cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins, siblings, and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

"Consensual Romantic and/or Sexual Relationship" means any consensual romantic and/or sexual relationship between a City official or Contractor and any City official who may supervise him or her directly or indirectly, or who may influence the terms and conditions of his or her employment or contract with the City.

“Cronyism” means making an employment or contracting decision based upon personal, political, financial, or commercial relationships instead of merit when the person or entity benefitting from the employment, promotion, supervision or contract does not have the qualifications for the position or contract, or is being compensated at a rate that is more than the rate that would be paid other employees or contractors performing the same or similar functions.

“Nepotism” means employing, promoting, supervising or contracting with a person or persons who have a family relationship or a consensual romantic and/or sexual relationship with a City official.

### **Sec. 2-3.403 Restricting Nepotism and Cronyism in Public Employment.**

#### **(a). Statement of Policy.**

It is the policy of the City of Hercules to hire, promote, and transfer employees on the basis of individual merit and to avoid favoritism or discrimination in making such decisions. The employment of relatives of City officials, in positions where one might have influence over the other’s status or job security, is regarded as a violation of this Section. Nepotism and cronyism, as defined in Section 2-3.402, are prohibited from City employment decisions to the full extent permitted by law.

It is therefore the City’s policy to prohibit nepotism and cronyism in public employment according to the guidelines below:

(1) An individual will not be hired, promoted, transferred, or otherwise placed into a position when a person with whom the individual has a family relationship or consensual romantic and/or sexual relationship occupies a position in his or her direct supervisory chain of command.

(2) Individuals will not be hired, promoted, transferred, or otherwise placed into a position when to do so would constitute cronyism.

(3) Department Heads are prohibited from employing or supervising any person with whom the Department Head has a family relationship or consensual romantic and/or sexual relationship within his/her department in any capacity in which that person may receive compensation.

(4) Department Heads are prohibited from employing or supervising any individual, when to do so would constitute cronyism.

(5) City positions should be advertised to the public and filled pursuant to an objective selection process based upon qualification.

(b) Resolving a Violation.

In the event nepotism or cronyism arises due to circumstances such as through promotion, transfer, the development of a consensual romantic and/or sexual relationship or marriage, the involved individuals have six (6) months in which to settle the issue voluntarily (i.e. by having one of them change assignment or leave City employment.)

If the affected parties are unable to resolve the situation within the time provided, their immediate supervisors will review the case at the end of the six-month period. The supervisor's decision concerning which employee must change assignment, made after consultation with the Director of Human Resources, will be binding.

(c) Responsibility to Report.

It is the responsibility of a City Official to report a violation of this Section. A City employee must notify his/her supervisor, and it is the responsibility of an elected or appointed official to notify the City Manager, or the City Attorney in the case of a violation by the City Manager, when any of the following situations occur:

(1) When a person who is hired or appointed, or is being considered to be hired or appointed, has a family relationship or consensual romantic and/or sexual relationship with a City Official, and/or

(2) When a City Official has or develops a family relationship or consensual romantic and/or sexual relationship with another City Official who occupies a position in his or her direct supervisory chain of command, and/or

(3) When hiring, promotion, appointment or supervision of a City Official constitutes cronyism as defined in Section II.

The intent of this Section is to ensure that no conflict of interest, favoritism, preferential treatment, or discrimination enters into the hiring, promotion, and/or transfer practices of the City.

(d) Penalty for Failure to Report.

A City Official, other than an elected official, who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is employed by the City, or who knows or should know of any employment decision that constitutes nepotism or cronyism and fails to report the violation, is subject to discipline, including but not limited to suspension or termination.

An elected official who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is employed by the City, or who knows or should know of an employment decision that constitutes nepotism or cronyism and fails to report the violation, is subject to censure.

**Sec. 2-3.404 Restricting Nepotism and Cronyism in Public Contracting.**

(a) Statement of Policy.

It is the policy of the City of Hercules to avoid favoritism or discrimination in making decisions to award contracts for supplies, construction, maintenance, professional or other services. The awarding of a contract or the approval of payments or expenses under a contract by a City Official, to a person with whom she or he has a family relationship or a consensual romantic and/or sexual relationship, is regarded as a violation of this Section. Nepotism and cronyism as defined in Section 2-3.402 are hereby prohibited from City contracting decisions to the full extent permitted by law.

It is therefore the City's policy to prohibit nepotism and cronyism in City contracts, according to the guidelines below:

(1) An individual Contractor shall not be awarded a contract with the City when the Contractor has a family relationship or consensual romantic and/or sexual relationship with a City Official who may have some influence over the award or management of the contract, or when the award of a contract to that individual Contractor would constitute nepotism or cronyism.

(2) Firms shall not be awarded contracts with the City when an owner, manager, senior member, principal, officer, or partner of the firm has a family relationship or consensual romantic and/or sexual relationship with a City Official who may have some influence over the award or management of the contract, or when the award of a contract to a firm would constitute nepotism or cronyism.

(3) A City Official is prohibited from awarding contracts to any individual with whom he or she has a family relationship or consensual romantic and/or sexual relationship, or to any firm when an owner, manager, senior member, principal, officer, or partner of the firm has a family relationship or consensual romantic and/or sexual relationship with the employee or official, or when to do so would constitute nepotism or cronyism.

The intent of this Section is to ensure that no conflict of interest, favoritism, or discrimination enters into the contracting practices of the City.

(b) Responsibility to Report a Violation of Regulations Against Contracting with Relatives or Contracts that Constitute Cronyism.

It is the responsibility of a City Official to report a violation of this Section. A City employee must notify his or her supervisor, and an elected or appointed official must notify the City Manager, or the City Attorney in the case of a violation by the City Manager, when he or she is aware of any of the following situations:

(1) When a person who has a family relationship or consensual romantic and/or sexual relationship with a City Official is being considered for the award of a contract to provide services to the City, and/or

(2) When a City Official has or develops a family relationship or a romantic and/or consensual sexual relationship with a person who has an existing contract to provide services to the City, and/or

(3) When the award of a contract would constitute nepotism or cronyism as defined in Section 2-3.402.

(c) Penalty for Failure to Report.

A City Official, other than an elected city official, who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is being considered for or has been awarded a contract with the City in violation of this Section, and fails to report the violation, is subject to discipline, including, but not limited to, suspension or termination.

An elected official who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is being considered for or has been awarded a contract with the City in violation of this Section and fails to report the violation, is subject to censure.

A Contractor who has a contract with the City or who seeks a contract with the City and fails to report that a person with whom she or he has a family relationship or consensual romantic and/or sexual relationship is employed by the City or is a City Official, or that the award of the contract constitutes cronyism in violation of this Section, may have his or her contract terminated and may be precluded from being awarded any future contracts with the City.

**Sec. 2-3.405 Penalties Not Exclusive.**

The penalties provided under this Article are not exclusive, and do not preclude punishment under any other applicable provision of law.

**Sec. 203.406 Notice and Acknowledgment.**

(a) The requirements of this Article shall be acknowledged annually by all City Officials who are required to comply with State of California financial disclosure requirements, on a form developed by the City Attorney and provided by the City Clerk. The written acknowledgment must be submitted at the time such financial disclosures are required to be submitted.

(b) All contractors and prospective contractors shall be notified in writing of the requirements of this Article at the time the City issues a request for proposals or qualifications, and prior to entering into a sole source agreement.”

**2. Severability.**

In the event that any one or more of the provisions of this Ordinance are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the other provisions of this Ordinance, and this Ordinance shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

3. The foregoing Ordinance was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the twenty-eighth day of April, 2015 by the following vote of the Council:

AYES: M. de Vera, C. Kelley, B. Kelly, S. McCoy. D. Romero

NOES: None

ABSENT: None

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Sherry McCoy, Mayor

ATTEST:

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Margaret S. Roberts, MMC  
Administrative Services Director/City Clerk